

**ORDINANCE NO. O-2022-24**  
**AMEND DULUTH MUNICIPAL CODE CHAPTER 15**  
**“STORMWATER UTILITY AND FEES”**

**WHEREAS**, The City of Duluth is authorized by the Georgia Constitution of 1983, including, without limitation, Article IX, Section II, Paragraphs I and III thereof and O.C.G.A. § 36-82-62 to provide stormwater management services, systems, and facilities throughout the corporate boundaries of the City of Duluth; and

**WHEREAS**, the city presently owns and operates stormwater management systems and facilities, which have been developed over many years. The future usefulness and operational function of the existing stormwater management systems and facilities owned and operated by the city, and the additions and improvements thereto, rests on the ability of the city to effectively manage, protect, control, regulate, use, and enhance stormwater systems and facilities within the city in concert with the management of other water resources within the city. In order to do so, the city must have both a comprehensive stormwater management program as well as an adequate and stable funding source for implementation of its comprehensive stormwater management program and drainage-related capital improvement needs; and

**WHEREAS**, the city is required under federal and state regulations [i.e. the Federal Clean Water Act, the city's national pollutant discharge elimination system (hereinafter "NPDES") phase I stormwater permit] to provide enhanced management of stormwater runoff quality to mitigate the impacts of pollutants which may be discharged from the public municipal separate storm sewer system (MS4) and stormwater conveyance system into State of Georgia or United States' waters. Therefore, it is appropriate for the city to establish a stormwater utility and impose a stormwater user fee charge upon all improved properties that may discharge, directly or indirectly, into the public MS4 and stormwater conveyance system, whether the property is private or public in nature; and

**WHEREAS**, the stormwater management services rendered may differ depending on many factors and considerations, including but not limited to location, demands and impacts imposed on the stormwater management systems and programs, and risk exposure. It is practical and equitable to allocate the cost of stormwater management among the owners of improved properties in proportion to the demands the properties impose on the city's stormwater management program which results in services being provided to such properties and the owners thereof. The fair and equitable apportionment of costs via the user fee charge should correlate to the stormwater management services provided to that property and the runoff demand that the property imposes on the public drainage system and the city's stormwater management program; and

**WHEREAS**, the stormwater management needs in the city include, but are not limited to, protection of the public health, safety, and welfare of the community. Provision of stormwater management services renders and/or results in both a service and a benefit to

all properties, property owners, businesses, citizens, and residents of the city in a variety of ways even though the benefits may be indirect or immeasurable; and

**WHEREAS**, it is imperative that the proceeds from all user fee charges for stormwater management services, systems or facilities, together with any other supplemental revenues raised or otherwise allocated specifically to stormwater management services, systems or facilities, be dedicated solely to those purposes, and such proceeds of user fee charges and supplemental revenues shall therefore be deposited into the City of Duluth Stormwater Utility Enterprise Fund and shall remain in that fund and be dispersed only for stormwater management capital, operating and non-operating costs, lease payments and debt service of bonds or other indebtedness for stormwater management purposes.

**SECTION 1. SEVERABILITY.**

Should any section or provision of this Ordinance or any Ordinance pertaining to the companion applications as identified herein be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

**SECTION 2. EFFECTIVE DATE.**

The effective date of this Ordinance shall be upon approval by the City Council of the City of Duluth, Georgia.

**SECTION 3. REPEALER.**

All conflicting ordinances and regulations are hereby repealed and replaced as set forth in this Ordinance, No. O-2022-24.

**NOW THEREFORE**, the City Council of the City of Duluth hereby ordains that the Duluth Municipal Code Chapter 15 be amended to read as follows:

CHAPTER 15- UTILITIES

ARTICLE I. - STORMWATER UTILITY

Sec. 15-1. - Purpose.

This article shall serve the purpose of establishing the City of Duluth Stormwater Utility.

Sec. 15-2. - Findings of fact.

The mayor and city council make the following findings of fact:

- (1) The City of Duluth is authorized by the Georgia Constitution of 1983, including, without limitation, Article IX, Section II, Paragraphs I and III thereof and O.C.G.A. § 36-82-62 to provide stormwater management services, systems and facilities

throughout the corporate boundaries of the City of Duluth (hereinafter "the City" or "Duluth").

- (2) In promulgating the regulations contained in this article, Duluth is acting pursuant to authority granted by the Constitution and laws of the State of Georgia and its City Charter to provide for stormwater collection and disposal. A system for the collection, conveyance, storage, treatment and disposal of stormwater provides services to all properties within the city and surrounding areas.
- (3) Failure to effectively manage stormwater runoff may:
  - a. Cause erosion of lands, threaten businesses and residences, and other facilities with water damage and may environmentally impair the rivers, streams and other bodies of water within, and downstream of, the city.
  - b. Adversely affect the operations of the sanitary sewer system operated by Gwinnett County thereby increasing the likelihood of infiltration and inflow into the sanitary sewer system.
  - c. Contribute to the potential degradation of the quality of both surface water and groundwater resources.
- (4) The city presently owns and operates stormwater management systems and facilities, which have been developed over many years. The future usefulness and operational function of the existing stormwater management systems and facilities owned and operated by the city, and the additions and improvements thereto, rests on the ability of the city to effectively manage, protect, control, regulate, use, and enhance stormwater systems and facilities within the city in concert with the management of other water resources within the city. In order to do so, the city must have both a comprehensive stormwater management program as well as an adequate and stable funding source for implementation of its comprehensive stormwater management program and drainage-related capital improvement needs.
- (5) The city is required under federal and state regulations [i.e. the Federal Clean Water Act, the city's national pollutant discharge elimination system (hereinafter "NPDES") phase I stormwater permit] to provide enhanced management of stormwater runoff quality to mitigate the impacts of pollutants which may be discharged from the public municipal separate storm sewer system (MS4) and stormwater conveyance system into State of Georgia or United States' waters. Therefore, it is appropriate for the city to establish a stormwater utility and impose a stormwater user fee charge upon all improved properties that may discharge, directly or indirectly, into the public MS4 and stormwater conveyance system, whether the property is private or public in nature.

- (6) Compliance with the regulatory obligations of the city's NPDES phase I stormwater permit, the Metropolitan North Georgia Water Planning District (MNGWPD), the city's comprehensive plan and the other applicable regulatory programs will affect the cost of providing stormwater management services, systems and facilities above what is currently being spent for stormwater management program implementation, water quality management, drainage system maintenance, floodplain management, capital construction and other program activities.
- (7) The cost of operating and maintaining the city's stormwater management system and the funding of necessary repairs, replacements, improvements and extensions thereof should, to the extent practicable, be allocated in relationship to the services received from the city's stormwater management program.
- (8) The professional engineering and financing analysis and related documents prepared by the city's stormwater consultant properly assesses and defines the city's stormwater management program problems, needs, goals, priorities and operational costs as well as the stormwater management program funding strategy. The applicable supporting, project-related documents that are incorporated herein by reference include the following: Stormwater Management Program Assessment and Cost Analysis (Technical Memorandum No. 1 dated January 28, 2011); Stormwater Utility User Fee Recommendations Memorandum (Project Memorandum dated April 25, 2011); and Stormwater Utility Implementation (Technical Memorandum Addendum dated April 25, 2011, or the most recent version).
- (9) Given the stormwater management program problems, needs, goals, priorities and funding strategy identified in the aforementioned professional engineering and financing analysis, it is appropriate to authorize the formation of an organizational and accounting entity dedicated specifically to the management, maintenance, protection, control, regulation, use, and enhancement of stormwater management services, systems and facilities within the city in concert with other water resource management programs.
- (10) Stormwater management is applicable and needed throughout the incorporated areas of the city. While specific service and facility demands may differ from area to area at any given point in time, a stormwater management system and service area encompassing all lands and water bodies within the incorporated areas of the City of Duluth is consistent with the present and future needs of the community.
- (11) The stormwater management services rendered may differ depending on many factors and considerations, including but not limited to location, demands and impacts imposed on the stormwater management systems and programs, and risk exposure. It is practical and equitable to allocate the cost of stormwater management among the owners of improved properties in proportion to the demands the properties impose on the city's stormwater management program

which results in services being provided to such properties and the owners thereof. The fair and equitable apportionment of costs via the user fee charge should correlate to the stormwater management services provided to that property and the runoff demand that the property imposes on the public drainage system and the city's stormwater management program.

- (12) The stormwater management needs in the city include, but are not limited to, protection of the public health, safety, and welfare of the community. Provision of stormwater management services renders and/or results in both a service and a benefit to all properties, property owners, businesses, citizens, and residents of the city in a variety of ways even though the benefits may be indirect or immeasurable.
- (13) A stormwater management program provides the most practical and appropriate means of properly delivering stormwater management services throughout the city, and the most equitable means to implement an enhanced level of service for stormwater management service delivery within the city through stormwater user fee charges, user fees and other mechanisms.
- (14) The amount of impervious surface on each improved property is the most important factor influencing stormwater runoff characteristics and these characteristics bear a rational nexus to the cost of the stormwater management services provided by the city, or to be provided by the city in the future, to that property. As a result, the amount of impervious surface on each property is therefore the most appropriate parameter for calculating a periodic stormwater user fee charge.
- (15) A schedule of stormwater utility user fee charges based on the area of impervious surface located on each improved property is the most appropriate and equitable means of allocating the cost of stormwater management services throughout the city. Stormwater utility user fee charges may be designed with specific modifiers to further enhance customer equity, as well as customer understanding of the user fee charge rate structure, while at the same time minimizing the city's customer account management and maintenance efforts.
- (16) Stormwater utility user fee charges may be supplemented by other types of fees and charges which address specific needs, including, but not limited to, special service fees, special assessments, revenue bonds, use of proceeds from special purpose local option sales taxes (SPLOST) and other forms of revenue, as deemed appropriate by the mayor and city council.
- (17) The existence of privately owned and maintained on-site stormwater control facilities, activities or assets which reduce, or otherwise mitigate, the impact of a particular property on the city's stormwater management program, and the stormwater utility's cost of providing stormwater management services and/or stormwater management systems and facilities, should be taken into account to reduce the user fee charge on that property either in the form of a direct reduction

or a credit, and such reduction or credit should be conditioned upon continuing provision of such services, systems, facilities, activities or assets in a manner complying with the standards and codes as determined by the stormwater utility. Credits for privately owned and maintained stormwater management systems, facilities, activities or assets shall be generally proportional to the affect that such systems have on the reduction and mitigation of the stormwater runoff impacts from the property.

- (18) It is imperative that the proceeds from all user fee charges for stormwater management services, systems or facilities, together with any other supplemental revenues raised or otherwise allocated specifically to stormwater management services, systems or facilities, be dedicated solely to those purposes, and such proceeds of user fee charges and supplemental revenues shall therefore be deposited into the City of Duluth Stormwater Utility Enterprise Fund and shall remain in that fund and be dispersed only for stormwater management capital, operating and non-operating costs, lease payments and debt service of bonds or other indebtedness for stormwater management purposes.
- (19) In order to protect the health, safety and welfare of the public, the governing authority of the City of Duluth hereby exercises its authority to establish a stormwater utility enterprise fund. The city will enact a stormwater utility rate ordinance in the future to establish stormwater utility user fee charge rates for the provision of stormwater management services.

#### Sec. 15-3. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Act means and refers to the Clean Water Act as amended by the Water Quality Act of 1987 (33 U.S.C. § 1251 et seq.), as amended, and the rules and regulations promulgated by the United States Environmental Protection Agency pursuant thereto.

Attached single family residential (ASFR) property shall mean improved property containing individually owned, attached dwelling units such as duplexes, triplexes, quadplexes, condominiums, townhouses, or other similar residential structures not listed herein where one or more family groups commonly and normally reside or could reside. Improved property may be classified as an ASFR despite the presence of incidental structures associated with residential uses such as garages, carports and small storage buildings. Improved property may be classified as ASFR property despite the presence of a commercial use. ASFR property shall not include improved property used primarily for non-residential purposes, herein defined as NSFR properties or properties defined herein as DSFR.

Credit means a reduction in the amount of a customer's stormwater user fee charge in recognition of a customer's efforts to mitigate the stormwater runoff impact that developed property has on the city stormwater management services and systems, and/or the efforts of a customer to offset the city's cost for implementation of stormwater management program activities such as public education, watershed stewardship, etc.

Customers of the stormwater utility shall include all persons, properties, and entities serviced by and/or benefiting from the services provided by the city's stormwater management program and the stormwater utility. These services include, but are not necessarily limited to, the stormwater utility's administration, management, maintenance, expansion, and improvement of the public stormwater management systems for the handling of stormwater runoff of private and public properties, and the regulation of the public and private stormwater management systems, controls, facilities, and activities.

Detached single family residential (DSFR) property shall mean improved property containing one (1) residential structure situated upon a single lot of record which is not attached to another dwelling, and which contains one (1) or more bedrooms, with bathroom and kitchen facilities, designed for occupancy by one (1) family. Improved property may be classified as a DSFR property even if there is present incidental structures associated with residential uses such as garages, carports, storage buildings, guest houses, servants or caretaker's quarters, cottages or barns, or the presence of a commercial use within the residence, as long as such use does not result in additional areas of impervious surfaces. DSFR properties shall not include improved property containing structures used primarily for nonresidential purposes, manufactured homes located within manufactured home parks where the land is owned by someone other than the owners of the manufactured homes, ASFR developments, or undeveloped property.

Dwelling unit means a structure, regardless of the type or method of construction, which contains one (1) or more bedrooms, a bathroom, and cooking facilities, designed for occupancy by one (1) or more person(s) regardless of relationship, living as a single-family unit.

Equivalent residential unit (ERU) means the stormwater user fee charge billing unit increment related to the mean horizontal impervious surface area footprint of two thousand nine hundred ninety-seven (2,997) square feet for a detached, single family residential (DSFR) residential parcel within the city as defined herein. The mean horizontal impervious surface area footprint for parcels defined herein as attached single family residential (ASFR) is one thousand four hundred ninety-nine (1,499) square feet.

Hydrologic response defines the manner and means whereby stormwater collects, remains, infiltrates, and is conveyed from a property. Hydrologic response is dependent on several factors including, but not limited to, the presence of impervious surface, the parcel's size, the parcel's shape, the parcel's topography, the parcel's vegetative canopy, the parcel's groundwater characteristics, the parcel's on-site operations, the parcel's stormwater

controls, the parcel's antecedent moisture as well as the parcel's geologic and hydro-geologic characteristics.

Impervious area shall mean and have the same definition as impervious surface.

Impervious surface means those areas which prevent or impede the infiltration of stormwater into the soil in the manner in which it entered the soil, in natural conditions, prior to development and causes stormwater runoff to collect, concentrate or flow in a manner materially different from what would occur if the land were in an unaltered natural condition. Common impervious surfaces include, but are not limited to, rooftops, buildings or structures, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, awnings and other fabric or plastic coverings, and other surfaces which prevent or impede the natural infiltration of rainfall, or stormwater runoff, which existed prior to development.

Improved property (or developed property) means property altered from its natural state by construction or installation of more than five hundred (500) square feet of impervious surfaces.

Non-single family residential (NSFR) property shall mean a developed parcel of land that consists of various non-residential land uses including, but not limited to: (1) multi-family, commercial (including mixed commercial & residential), office/institutional, public, transportation, industrial, manufacturing and storage buildings and facilities; (2) parking lots, parks, public and private schools, universities and hospitals; (3) streets, roads, water and wastewater treatment plants; and (4) any other form of use not specifically defined as a single family residential property (SFR).

Parcel shall mean a designated parcel, tract, or area of land established by plat, subdivision, or as otherwise permitted by law, to be separately owned, used, developed, or built upon.

Private stormwater management systems and facilities shall mean those natural and manmade channels, swales, ditches, rivers, streams, creeks, branches, reservoirs, ponds, drainageways, inlets, catch basins, pipes, headwalls, storm drains, lakes and other physical works, properties and improvements which transfer, control, convey or otherwise influence the movement of stormwater runoff or water quality, which are not public.

Public stormwater management systems and facilities (or the city's municipal separate storm sewer system) shall mean those natural and manmade channels, swales, ditches, rivers, streams, creeks, branches, reservoirs, ponds, drainageways, inlets, catch basins, pipes, headwalls, storm drains, public streets, curbs and gutters, lakes and other physical works, properties and improvements which transfer, control, convey or otherwise influence either the movement of stormwater runoff or water quality, which are owned by the City, where the City has exercised dominion and control, or over which the City has accepted dedication of an easement or other legally binding permanent right of use for stormwater drainage and for which the City has the obligation of maintenance for stormwater drainage purposes.

Service area means the entire land area within the corporate limits of the City of Duluth.

Stormwater management services mean all water quality and water quantity related services provided by the city which relate to the:

- (1) Transfer, control, conveyance or movement of stormwater runoff through the incorporated areas of the city;
- (2) Maintenance, repair and replacement of existing stormwater management systems and facilities;
- (3) Planning, development, design and construction of additional stormwater management systems and facilities to meet current and anticipated needs;
- (4) Regulation of the use of stormwater management services, systems and facilities;
- (5) Compliance with applicable state and federal stormwater management regulations and permit requirements; and
- (6) Other services as the deemed appropriate by the city.

Stormwater user fee charge means the periodic user fee charge imposed pursuant to the ordinance from which this article is derived and other applicable ordinances by the City of Duluth Stormwater Utility for providing stormwater management services and stormwater management systems and facilities. This term shall exclude special charges to the owners of particular properties for services, systems or facilities related to stormwater management, including, but not limited to, charges for development plan review, inspection of development projects, on-site stormwater control systems and other stormwater management related services provided by the City for which a corresponding fee is collected for the service rendered.

Stormwater utility manager means the person appointed by the mayor and city council to administer the provisions of this article.

Undeveloped land means land in its unaltered natural condition or which is modified to such a minimal degree as to have a hydrologic response comparable to land in an unaltered natural condition shall be deemed undeveloped. For purposes of this article, undeveloped land includes property altered from its natural condition by the creation or installation of five hundred (500) square feet or less of impervious surface.

User is defined as any entity that owns and/or uses property, which maintains connection to, discharges to, or otherwise receives services from the city for stormwater management.

Sec. 15-4. - Stormwater utility and enterprise fund established.

- (a) There is hereby established a stormwater utility to be known as the City of Duluth Stormwater Utility, which shall be responsible for stormwater management services throughout the incorporated areas of the city, and which shall provide for the management, protection, control, regulation, use and enhancement of the city's stormwater management systems and facilities and stormwater management services.

- (b) There is hereby established a stormwater utility enterprise fund in the city budgeting and accounting systems for the purpose of dedicating and protecting all funding applicable to the purposes and responsibilities of the city stormwater management program and stormwater utility, including, but not limited to, rates, charges, and fees as may be established by the mayor and city council from time to time, and other funds that may be transferred or allocated to the stormwater utility.
- (c) All revenues and receipts of the stormwater utility shall be placed in the stormwater utility enterprise fund in trust; to be expended solely for stormwater management related purposes and services. Stormwater utility revenue shall be used only for operating expenses and/or capital investments of the stormwater utility. However, other forms of revenue and/or financial resources, not accounted for in the stormwater utility revenue, may be allocated as deemed appropriate by the mayor and city council to provide supplemental funding to the stormwater management program and for the provision of stormwater management services.
- (d) The city shall place responsibility with the city manager or his/her designee (hereafter referred to as the stormwater utility manager) for the operation, maintenance and regulation of the stormwater utility and stormwater management program services performed, owned and operated or maintained by the city, and other related assets, including, but not limited to, properties, other than road rights-of-way, upon which such stormwater management systems and facilities are located, easements, rights-of-entry and access and certain equipment used solely for stormwater management.

Sec. 15-5. - Stormwater utility service area.

- (a) There shall be one (1) stormwater utility service area in the city which shall encompass the municipal boundaries of the City of Duluth. The city has established that all developed parcels within the municipal boundaries receive stormwater management services from the city. Improved/developed properties within the defined service area will receive a stormwater user fee charge bill because they contribute stormwater runoff to the public drainage system; they are directly or indirectly connected to the city's drainage system; and they receive stormwater management services from the city at varying service levels from which they derive some degree of benefit even though the benefit may be indirect and immeasurable.

Sec. 15-6. - Scope of responsibility for stormwater management systems and facilities.

- (a) The stormwater utility shall provide stormwater management services for existing and proposed public stormwater management systems and facilities as defined in this article, subject to funding availability and to policy determinations made in the best interest of the public health, welfare and safety and the environment. Additionally, the stormwater utility may accept the responsibility for providing stormwater management services to private stormwater management systems and

facilities, acceptance of which conforms to policies established by the mayor and city council or those persons or entities designated by the mayor and city council to set such policies.

- (b) In addition to ownership of all stormwater management systems and facilities within the city's public road rights-of-way, the city owns or has rights established by written agreements which allow it to operate, maintain, improve and access those stormwater management systems and facilities which are located:
- (1) On private property but within legally dedicated easements granted to, and accepted by, the city;
  - (2) On private property where the city has been granted, by written agreements, for rights-of-entry, rights-of-access, rights-of-use or other permanent provisions for operation, maintenance, improvement and access to the stormwater management system facilities located thereon;
  - (3) On land dedicated to, and accepted by, the city solely for the operation, maintenance, improvement and access to the stormwater management systems and facilities located thereon;
  - (4) On public land which is owned by the city and/or land of another governmental entity upon which the city has agreements providing for the operation, maintenance, improvement and access to the stormwater management systems and facilities located thereon; or
  - (5) In any platted single family residential subdivision, any pipe or other manmade structurally artificial conveyance which conveys water from within the public road rights-of-way maintained by the city or public road easements maintained by the city to its point of discharge. This shall not include any pipes or other manmade conveyances that convey water from private property to public rights-of-way/road easements and/or discharge on public rights-of-way/road easements.
- (c) Operation, maintenance and/or improvement of stormwater management systems and facilities which are located on private or public property not owned by the city, and for which there has been no written agreement granting easements, rights-of-entry, rights-of-access, rights-of-use or other form of dedication thereof to the city for operation, maintenance, improvement and access of such stormwater management systems and facilities shall be and remain the legal responsibility of the property owner, except as otherwise provided for by the state and federal laws and regulations.
- (d) The stormwater utility may provide stormwater management services to privately owned stormwater management systems and facilities to ascertain that said facilities are functioning as designed and approved. The stormwater utility may

provide for remedial maintenance of said private facilities based upon the severity of stormwater problems and potential hazard to the public health, safety, and welfare and the environment, and in cases where such remedial maintenance is required the city reserves the right to bill the owner or owners of said private facility for the costs of such maintenance.

- (e) It is the express intent of this article to protect the public health, safety and welfare of people and property in general, but not to create any special duty or relationship with any individual person, or to any specific property within or outside the municipal boundaries of the city. The city expressly reserves the right to assert all available immunities and defenses in any action seeking to impose monetary damages or equitable remedies upon the city, its elected officials, officers, employees and agents arising out of any alleged failure or breach of duty or relationship.
- (f) If any permit, plan approval, inspection or similar act is required by the city as a condition precedent to any activity or change upon property not owned by the city pursuant to this or any other regulatory ordinance, regulation or rule of the city, or under federal or state law, the issuance of such permit, plan approval or inspection shall not be deemed to constitute a warranty, express or implied, nor shall it afford the basis for any action, including any action based on failure to permit, negligent issuance of a permit, negligent plan approval, or negligent maintenance of any permitted stormwater management system or facility not expressly dedicated to and accepted by the city for further maintenance in an action seeking the imposition of money damages or equitable remedies against the city, its city council members, mayor, officers, employees or agents.

Sec. 15-7. - Stormwater user fee charges.

- (a) It shall be the policy of the city that user fee charges for stormwater management services to be provided by the stormwater utility in the designated service area shall be equitably derived through methods which have a demonstrable relationship to the varied demands and impacts imposed on the stormwater management services by individual properties and/or the level of service rendered by, or resulting from, the provision of stormwater management services by the city.
- (b) The basis for calculation of the stormwater user fee charge to all developed property within the city is established in this article. The city shall assign or determine the customer class, amount of impervious area and other pertinent factors as may be needed for the fair, reasonable and equitable allocation of the costs to deliver stormwater management services and to calculate the stormwater user fee charges for all developed properties in the city.
- (c) Stormwater user fee charge rates shall be structured so as to be uniform within the customer class, and the resultant user fee charges shall bear a reasonable

connection, or rational nexus, to the cost of providing stormwater management services. User fee charge rates shall be in addition to other rates, charges, or fees employed for stormwater management within the incorporated areas of the city as defined herein.

- (d) To the extent practicable, credits against stormwater user fee charges shall be provided for on-site stormwater control systems and activities constructed, operated, maintained and performed to the city's standards by public and private property owners which eliminate, mitigate or compensate for the impact that the property or person may have upon stormwater runoff discharged to public stormwater management systems and facilities, or to private stormwater management systems and facilities which impact the proper function of public stormwater management systems and facilities.
- (e) The stormwater user fee charges shall accrue beginning July 1, 2011 and shall be billed periodically by the city thereafter via a method established by the mayor and city council.

Sec. 15-8. - Stormwater utility customer classes.

- (a) The stormwater utility shall establish specified customer classes within the service area to reflect differences in impervious surface and stormwater runoff characteristics; stormwater management program services provided by the city to the stormwater utility customers; and the respective demand that those customers' properties place on the city stormwater management program and drainage system components. All publicly owned, developed properties are subject to the user fee charges on the same basis as private properties, unless otherwise exempted. The stormwater utility classes will encompass all developed and undeveloped properties within the city and are defined as follows:
  - (1) The detached single family residential (DSFR) class shall consist of all developed properties classified as DSFR customers per the applicable definition.
  - (2) The attached single family residential (ASFR) class shall consist of all developed properties classified as ASFR customers per the applicable definition.
  - (3) The non-single family residential (NSFR) class shall consist of all developed properties classified as NSFR customers per the applicable definition.
  - (4) The undeveloped class shall consist of properties classified as undeveloped per the applicable definition.
  - (5) Documentation pertaining to the stormwater utility customer classes shall be kept on file in the office of the stormwater utility manager for public inspection.

Sec. 15-9. - Stormwater utility user fee charge rates.

- (a) The stormwater utility shall impose a stormwater user fee on all developed properties within the service area in a fair and equitable manner, including, except as otherwise provided herein. The stormwater utility shall apportion the cost of delivering stormwater services to all developed properties based on the demand the property places on the city's stormwater management program, the stormwater services provided by the city to that property and the benefits derived.
- (b) The mayor and city council shall establish by ordinance the stormwater user fee charge rates, and the billing rates may be modified by the mayor and city council from time to time to meet the financial and operational needs of the Duluth Stormwater Utility. A schedule of said rates shall be on file in the office of the City Clerk for public inspection. In setting or modifying such rates, it shall be the goal of the city to establish rates that are fair, equitable and reasonable, and which, together with other funding sources available to the Duluth Stormwater Utility for services, systems, and/or facilities related to stormwater management are sufficient to support the cost of the stormwater management program, including, but not limited to, the payment of principal and interest on debt obligations, lease payments, operating expenses, capital outlays, non-operating expenses, provisions for prudent reserves and other stormwater utility related costs as deemed appropriate by the city.
- (c) Stormwater user fee charges shall be based upon the total number of equivalent residential units (ERUs) associated with developed properties within the city. Each ERU shall correspond to two thousand nine hundred ninety-seven (2,997) square feet of impervious surface.
- (d) Gravel and compacted soil associated with driveways, parking areas, roads and all other areas that consist of these types of surface (or near surface) conditions on developed property will be designated as impervious surface and included in the customer's ERU calculation because of the hydrologic response characteristics of these materials. The total surface area associated with these materials will be calculated at eighty-five (85) percent of the total ERUs to reflect the hydrologic response characteristics and infiltration capabilities of these materials.
- (e) Calculation of user fee charges. The periodic stormwater user fee charges imposed on all developed properties shall be calculated by multiplying the stormwater user fee billing rate (per ERU) times the number of ERUs for each customer account. The number of ERUs that will be utilized to calculate the user fee charge for each customer account shall be in general accordance with the following:
  - (1) DSFR customer class: Each DSFR customer account shall be charged a flat rate of 1.0 ERU except as noted below:
    - a. If a DSFR customer account consists of more than eight thousand nine hundred ninety-one (8,991) square feet of impervious surface (or

three 3.0 ERUs), the customer account for that parcel will be charged as per the NSFR calculation described herein.

- (2) ASFR customer class: Each ASFR customer account shall be charged a flat rate of 0.5 ERU.
- (3) NSFR customer class: Each NSFR customer shall be charged 1.0 ERU for each 2,997 square feet, or increment thereof, of impervious surface located on the property to establish the total number of ERUs for billing. Fractional ERUs will be rounded to one decimal place to establish the total number of ERUs for billing.
- (4) Undeveloped land customer class: Undeveloped land shall not be charged a stormwater user fee.

Sec. 15-10. - Stormwater user fee charge exemptions.

- (a) Except as provided in this section or otherwise provided by law, no developed public or private property located in the incorporated area of the city shall be exempt from the stormwater user fee charges. The stormwater utility user fee charge is not a tax and no exception, credit, offset, or other reduction in stormwater user fee charges shall be granted based on age, tax status, economic status, race, religion, disability, or other condition unrelated to the stormwater utility's cost of providing stormwater management program services and facilities.
- (b) Exemptions to the stormwater user fee charges are as follows:
  - (1) Parcels which contain five hundred (500) square feet, or less, of impervious surfaces shall be exempt from stormwater user fee charges.
  - (2) Linear railroad rights-of-way (i.e. tracks, rails, roadbed) outside of the defined yard limits shall be exempt from stormwater user fee charges. This exemption is in recognition of routine drainage system maintenance and capital construction activities undertaken by the rail road company associated with rights-of-way and drainage conveyance systems. However, railroad stations, rail yards, maintenance buildings, and/or other improved property used for railroad operations shall not be exempt from stormwater user fee charges.
  - (3) City streets and rights-of-way shall be exempt from stormwater user fee charges and the stormwater utility shall not charge the city a user fee charge for the city's impervious surface area resulting from the city's impervious surfaces which are owned and/or maintained by the city within the public rights-of-way. This exemption is in consideration of the city allowing the stormwater utility to utilize the city's existing streets, curbs, gutters, drainage ways and ditches, storm sewers, culverts, inlets, catch basins, pipes, head walls and other structures, natural and man-made within and owned by the city which controls and diverts surface water for the purposes of collecting, diverting, transporting and controlling surface and storm waters.

- All other developed property owned by the city shall be subject to the imposition of stormwater user fee charges in accordance with this article.
- (4) Private streets within the city as defined by applicable city ordinances and that are part of platted subdivisions will be exempt from the stormwater user fee charge.
  - (5) Gwinnett County roads and rights-of-way located within the city limits shall be exempt from stormwater user fee charges in situations where Gwinnett County has legal responsibility to perform all drainage system maintenance and capital construction activities with respect to such roads and rights-of-way. This exemption is in recognition of the drainage system maintenance and capital construction responsibilities undertaken by Gwinnett County. All other developed property owned by Gwinnett County that is within the service area shall be subject to the imposition of stormwater user fee charges in accordance with this article.
  - (6) Georgia Department of Transportation (GDOT) roads and rights-of-way shall be exempt from stormwater user fee charges. This exemption is in recognition of routine drainage system maintenance and capital construction activities undertaken by GDOT in association with GDOT rights-of-way road and drainage conveyance systems. However, maintenance buildings and/or other developed property used for GDOT purposes shall not be exempt from stormwater user fee charges.

Sec. 15-11. - Stormwater user fee charge credits.

- (a) The stormwater utility manager shall grant credits or adjustments based on the technical and procedural criteria set forth in the City of Duluth Stormwater Utility Credit Manual (Credit Manual), which is incorporated into this article by reference and made a part hereof. Copies of the credit manual will be maintained by and made available from the stormwater utility manager.
  - (1) Customers may apply for credits and/or adjustments in accordance with the credit manual.
  - (2) A stormwater user fee charge credit shall be determined based on the technical requirements, standards and criteria contained in the credit manual. The amount of credit, or reduction of the stormwater user fee charge, shall be in accordance with the criteria contained in the credit manual.
  - (3) Any credit allowed against the stormwater user fee charge is conditioned on continuing compliance with the city's design and performance standards as stated in the credit manual and upon continuing provision of the controls, systems, facilities, services, and activities provided, operated, and maintained by the customer. The stormwater utility manager may revoke a credit at any time for noncompliance with applicable standards and criteria as established in the credit manual or this article.

- (4) In order to obtain a credit, the customer must make application to the city on forms provided by the stormwater utility manager for such purpose, and in accordance with the procedures outlined in the credit manual.
  - (5) The application for any credit or adjustment must be in writing and must include the information necessary to establish eligibility for the credit or adjustment, and be in the format described in the credit manual. The customer's stormwater utility account must be paid and current prior to review and approval of a stormwater utility credit application by the city, except during the initial credit application period prior to issuance of the first bill. Incomplete applications will not be accepted for consideration and processing.
- (b) When an application for a credit is deemed complete by the stormwater utility manager, he shall have thirty (30) days from the date the complete application is received to approve the credit in whole, approve the credit in part, or deny the credit. The stormwater utility manager's decision shall be in writing and will be mailed to the address provided on the adjustment request, and service shall be complete upon mailing. Credits applied for by the customer and approved in whole or in part, shall apply to all stormwater user fee charges in accordance with the terms defined in the credit manual.

Sec. 15-12. - Stormwater user fee charge adjustments.

- (a) Adjustments.
- (1) The stormwater utility manager shall administer the procedures and standards for the adjustment of the stormwater user fee charge.
    - a. If a customer believes his stormwater user fee is incorrect, the customer may seek an adjustment of the stormwater user fee charge allocated to a property at any time by submitting the request in writing to the stormwater utility manager on forms provided by the city and setting forth in detail the grounds upon which relief is sought. The customer's stormwater utility account must be paid and current prior to consideration of an adjustment request by the city, except during the period prior to issuance of the first bill.
    - b. Customers requesting an adjustment shall be required, at their own expense, to provide accurate impervious area and other supplemental information to the stormwater utility manager, including, but not limited to, a survey certified by a registered land surveyor or a professional engineer, unless otherwise allowed by the city. Submittal of this information will be required if the city staff cannot make a determination based on field inspection and/or review of existing city aerial photography. Failure to provide the required information within the time limits established by the stormwater utility manager,

as may be reasonably extended, may result in denial of the customer's adjustment request.

- c. Once a completed adjustment request and all required information are received by the stormwater utility manager, the stormwater utility manager shall within thirty (30) calendar days render a written decision.
- d. In considering an adjustment request, the stormwater utility manager shall consider whether the calculation of the stormwater user fee charge for the property is correct.
- e. The stormwater utility manager's decision shall be in writing and will be mailed to the address provided on the adjustment request, and service shall be complete upon mailing.
- f. If the result of an adjustment is that a refund is due the applicant, the refund will be applied as a credit on the applicant's next stormwater user fee charge bill.

#### Sec. 15-13. - Appeals and hearings.

- (a) Appeals. An appeal to the city manager may be taken by any property owner or customer aggrieved by any decision of the stormwater utility manager. The appeal shall be taken within thirty (30) calendar days of the decision of the stormwater utility manager by filing with the city manager a notice of appeal in writing specifying the grounds thereof. Upon the filing of the notice of appeal, the stormwater utility manager shall forthwith transmit to the city manager all documentation constituting the record upon which the decision appealed from was taken.
- (b) Hearings. The city manager shall fix a reasonable time for hearing the appeal and give written notice to the appellant at least ten (10) calendar days prior to the hearing date. The notice shall indicate the place, date and time of the hearing. The city manager shall affirm, reverse, affirm in part, or reverse in part the decision of the stormwater utility manager after hearing the evidence. If the decision of the stormwater utility manager is reversed in whole or in part, resulting in a refund or credit due to the property owner or customer, then such refund or credit shall be calculated retroactive to the date of the initial appeal. The decision of the city manager shall be final, and there shall be no further administrative appeal. Any person aggrieved or dissatisfied with the decision of the city manager may petition the Superior Court of Gwinnett County for Writ of Certiorari.

#### Sec. 15-14. - Enforcement methods and inspections.

- (a) All property owners of improved property within the incorporated areas of the city shall provide, manage, maintain, and operate on-site stormwater management systems sufficient to collect, convey, detain, and discharge stormwater runoff in a safe manner consistent with all applicable City development regulations,

ordinances, and state and federal laws. Any failure to meet this obligation shall constitute a violation of this article and be subject to citation and prosecution in the City of Duluth Municipal Court. Each day such violation exists shall constitute a separate offense.

- (b) In the event a public nuisance is deemed to exist by the mayor and city council, the city may elect to sue in municipal court to abate such nuisance. In the event a public nuisance is found by the court to exist, which the property owner fails to abate within such reasonable time as allowed by the City of Duluth Municipal Court, the city may enter upon the property and cause work as is reasonably necessary to be performed, with the actual cost thereof assessed against the property owner in a similar manner as a tax levied against the property. From date of filing of such abatement action, the city shall have lien rights which may be perfected, after judgment, by filing a notice of lien on the general execution docket of the City of Duluth Municipal Court.
- (c) The city shall have the right for its employees or designated agents to enter upon public and private property during reasonable hours, and after reasonable notice to the owner thereof, in order to assure compliance with the provisions of this article, and state and federal law. Such inspections shall generally be limited to the following purposes:
  - (1) Inspecting or conducting engineering analyses on existing stormwater management systems and facilities located on-site;
  - (2) Verification and review of information contained within a stormwater utility credit manual application; and
  - (3) Determining that stormwater management systems and facilities need to be constructed.

Sec. 15-15. - Severability.

If the provisions of any article, section, subsection, paragraph, subdivision or clause of this article shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this article.

Sec. 15-16. - Repeal.

All ordinances or parts thereof which are in conflict with any provision or any section, subsection, paragraph, provision or clause of the ordinance from which this article is derived are hereby repealed to the extent of the conflict.

Secs. 15-17—15-19. - Reserved.

## ARTICLE II. - STORMWATER FEES

Section 15-20. - Stormwater user fee billing, delinquencies, collections and rates.

## (a) Billing.

- (1) A bill for stormwater user fee charges may be sent through the United States Postal Service or by alternative means, notifying the owner of the property being billed of the amount of the stormwater user fee charge, less credits, the date the payment is due and the date when payment is past due.
- (2) The city council authorizes the city clerk to bill and collect the Duluth Stormwater User Fee Charge as part of the property/ad valorem tax bill. The city council further authorizes the city clerk to charge and collect penalties and interest as set forth in subsection (b) of this section.
- (3) If a bill for a stormwater user fee charge for a particular parcel is generated, failure of the customer to receive the bill shall not be justification for nonpayment.
- (4) Regardless of the party to whom the bill is initially directed, the owner of the property, as identified from the public land records of Gwinnett County, shall be obligated to pay the appropriate stormwater user fee charge for that property and any interest and/or penalties that have accrued.
- (5) If a property is unbilled, or if no bill is sent for a particular tract of improved property, the Duluth Stormwater Utility may back bill for a period of up to one (1) year, but shall not be entitled to any interest or any penalty charges during the back billed period.

## (b) Delinquencies and collection.

- (1) A penalty or late charge in the amount of ten (10) percent of the base amount due and unpaid ninety (90) days after the due date shall be assessed against the customer.
- (2) In addition to the penalty stated above, interest in the amount of one (1) percent per month shall accrue on all unpaid amounts beginning December 16 of the year in which the payment is due.
- (3) The city shall assess all costs of collection, including attorneys' fees and court costs, against the property owner.
- (4) Unpaid stormwater user fee charges shall be collected in any manner permissible by Georgia law, including but not limited to: utilizing the services of a collection agency, by filing suit to collect on an unpaid account, or by using all methods allowed by Georgia law to collect on any judgment obtained, including enforcement of any lien resulting from any such judgment. Unless reduced to a judgment and a writ of fieri facias (FiFa) issued, the unpaid user fee charge shall not constitute a direct lien against the owner and/or the property.

## (c) Rates.

- (1) All parcels in the city shall be segregated into one (1) of four (4) customer classes: detached single-family residential (DSFR), attached single-family residential (ASFR), non-single-family residential (NSFR) and undeveloped.
- (2) The stormwater utility shall establish that one (1) equivalent residential unit (ERU) equals two thousand nine hundred ninety-seven (2,997) square feet of impervious surface area. The ERU of two thousand nine hundred ninety-seven (2,997) square feet is the mean impervious surface footprint for a typical DSFR parcel within the city. The stormwater user fee for one (1) ERU shall be seventy-five dollars (\$75) per year.
- (3) All developed parcels with at least five hundred (500) square feet of impervious surface area shall be billed for stormwater management program (SWMP) services and undeveloped parcels shall not be billed.
- (4) DSFR and ASFR parcels shall be billed a flat rate charge for SWMP services. All DSFR parcels will be charged one (1) ERU or seventy-five dollars (\$75) per year and all ASFR parcels will be charged one half (0.5) ERU or thirty seven dollars and fifty cents (\$37.50) per year, per dwelling unit, except as otherwise provided in this section.
- (5) DSFR parcels with eight thousand nine hundred ninety-one (8,991) square feet or more of impervious surface area (or three (3) ERUs) shall be charged using the NSFR rate calculation method as outlined herein.
- (6) NSFR parcels shall be billed on a parcel specific basis based on the actual amount of impervious surface area. NSFR parcels shall be seventy-five (\$75) per year for each increment of two thousand nine hundred ninety-seven (2,997) square feet impervious surface area, or fraction thereof.

Secs. 15-21—15-29. – Reserved.

### Article III. – Special Districts for Residential Stormwater Management Systems and Facilities

#### Section 15-30. Findings.

The city finds that there are many private stormwater management systems and facilities that have been constructed over the course of many years within the city and that many of these exist in states of disrepair or have the potential to fail with potentially damaging consequences to water quality and environmental health, as well as damage to private and public property in the city. With this threat to the health, welfare, and safety of the public in mind, the city enacts the following procedures by which those property owners utilizing private stormwater management systems and facilities may dedicate the maintenance of those systems to the city.

#### Section 15-31. Creation of special districts for stormwater management systems and facilities.

- (a) Any private residential lot owner served by a private stormwater management system or facility located within the city limits may present a request to be included in a special district to the city. Upon receipt of the request, the city shall determine the appropriate boundaries for the proposed special district for stormwater management that will serve the lot owner presenting the request and neighboring lot owners. The boundary shall consist of the residential neighborhood property served by a private stormwater management system or facility.
- (b) Upon receipt of a request, and after review, the city shall prepare a map showing the area for the proposed special district for stormwater management, identifying all the private property as well as any private stormwater maintenance systems or facilities within the proposed district. The city shall inspect and evaluate the condition of the private system and prepare a cost estimate. The cost estimate shall indicate the expected cost of making initial necessary repairs to the stormwater maintenance systems or facilities as well as an annual cost for maintenance thereafter.
- (c) Once the city has prepared the map and estimated the costs, the map and the cost estimate shall be made a part of a petition that may then be circulated among the private lot owners within the proposed district.
- (d) If a petition bearing signatures of more than 50 percent of the lot owners in the proposed district is returned to the city within one year of creation of the original petition by the city, the city shall verify the signatures on the petition and verify that the signatures represent more than 50 percent of the private lot owners in the proposed district. After satisfactory verification, the petition shall be presented to the city council. The city council shall conduct a public hearing for the purpose of determining whether to create the proposed special district for stormwater management. Notice in a

newspaper of general circulation shall be advertised at least 15 days before the public hearing indicating the time, place, and purpose of the hearing. At least 30 days prior to the hearing, a sign shall be placed on the city right of way at each public entrance to the subdivision advertising the time, place, and purpose of the hearing, and notice of the time, place, and purpose of the hearing shall be mailed to each property owner identified by tax records

- (e) Should the city council determine the creation of the district to be in the best interest of the city, they shall approve the creation of said district by ordinance or resolution. Said districts shall exist until such time as city council repeals the ordinance or for the time provided in the resolution creating such district; provided however that no such district shall exist for a period of more than ten years. The map and cost estimates of such special districts shall be maintained at city hall and be open to public inspection.
- (f) Should the city council determine the creation of the district is not in the best interest of the city, no such request containing any of the area included in the proposed district may be proposed to the city for a period of two years.

Section 15-32. Fees Assessed in Special Districts

- (a) Fees shall be assessed on each private lot within a special district created pursuant to section 15-31 in an amount necessary to pay the costs of initial repair of the stormwater system or facilities within the district. Such fees shall be in addition to and not in lieu of the city stormwater fee in article I and article II of this chapter.
- (b) The fee may be billed separately, on a customer statement and collected along with other fees for services, or on a customer ad valorem tax statement, at the city's sole discretion, provided that in no instance shall the service fee constitute a direct lien against the parcel. Unpaid fees shall be collected by filing suit to collect on an unpaid account and by using all methods allowed by Georgia law to collect on any judgment obtained thereby.

**IT IS SO ORDAINED this 11<sup>th</sup> day of July 2022.**

\_\_\_\_\_

Mayor Nancy Harris

Those councilmembers voting in favor:

\_\_\_\_\_  
Charles Jamin Harkness, Post 1

\_\_\_\_\_  
Marline Thomas, Post 2

\_\_\_\_\_  
Kenneth Lamar Doss, Post 3

\_\_\_\_\_  
Manfred Graeder, Post 4

\_\_\_\_\_  
Greg Whitlock, Post 5

Those councilmembers voting in opposition:

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTEST: \_\_\_\_\_

Teresa S. Lynn, Asst. City Mgr/City Clerk